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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **JAMES HADRIAN KLINKNER, Member No. 197236,** A Member of the State Bar.	)	Case No.: **10-O-00806-LMA** **DECISION & ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**[1]

I. Introduction

In this original disciplinary proceeding, which proceeded by default, the court finds that respondent **JAMES HADRIAN KLINKNER**[2] is culpable of one count of client abandonment (Rules Prof. Conduct, rule 3-700(A)(2)),[3] one count of failure to refund an unearned fee (rule 3-700(D)(2)), one count of failure to participate in a State Bar disciplinary investigation (Bus. & Prof. Code, § 6068, subd. (i)),[4] and one count of engaging in acts involving moral turpitude and

[1] The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. The court orders the application of the former Rules of Procedure of the State Bar in this proceeding because it has determined that injustice would otherwise result. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

[2] Respondent was admitted to the practice of law in the State of California on December 7, 1998, and has been a member of the State Bar of California since that time. Even though respondent has two prior records of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(f)), his second prior record of discipline is not yet final.

[3] Unless otherwise indicated, all further references to rules are to the State Bar Rules of Professional Conduct.

[4] Unless otherwise noted, all further statutory references are to the Business and Professions Code.

dishonesty (§ 6106). For the reasons set forth *post*, the court concludes that the appropriate level of discipline for the found misconduct is disbarment. Accordingly, the court will recommend that respondent be disbarred and will order that he be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding (§ 6007, subd. (c)(4)).

The Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) was represented by Deputy Trial Counsel Tammy M. Albertsen-Murray (hereafter DTC Albertsen-Murray). Respondent did not appear in person or by counsel.

II. Pertinent Procedural History

On July 22, 2010, the State Bar filed the notice of disciplinary charges (hereafter NDC) against respondent and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his then latest address shown on the official membership records of the State Bar of California (hereafter official address).

In the NDC, the State Bar charges respondent with six counts of professional misconduct. However, the sixth count is not labeled "count six," but instead is incorrectly labeled "count seven." The court deems the pleading error to be a typographical error and hereafter refers to the incorrectly labeled count as "count six" and not as "count seven."

Respondent failed to file a response to the NDC, which was due no later than August 16, 2010 (Rules Proc. of State Bar, former rule 103(a); see also Rules Proc. of State Bar, former rule 63 [computation of time]). Accordingly, on November 19, 2010, the State Bar filed a motion for the entry of respondent's default and served a copy of that motion on respondent by certified mail, return receipt requested, at his updated official address.

The declaration of DTC Albertsen-Murray, which is attached to the State Bar's motion for entry of default, establishes that the United States Postal Service (hereafter Postal Service) did not return the service copy of the NDC to the State Bar as undeliverable or for any other reason. DTC Albertsen-Murray's declaration does not, however, indicate whether or not the Postal Service provided the State Bar with a return receipt (i.e., a "green card") showing that the service copy of the NDC was delivered to respondent (or his official address). Nonetheless, service of the NDC on respondent was deemed complete when mailed even though the record does not indicate whether respondent actually received the copy of the NDC that was served on him. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Furthermore, DTC Albertsen-Murray's declaration establishes that, on October 14, 2010, she called respondent at the telephone number that he maintained on the State Bar's official membership records; that she got a recorded message identifying the telephone number as belonging to respondent, and that she left a voicemail message for respondent in which she indentified herself, stated the reason for her call, and stated that it was urgent for respondent to contact her. DTC Albertsen-Murray's declaration further establishes that, on October 18, 2010, she called respondent at a telephone number on which she had previously spoken to respondent; that she got a recorded message identifying the telephone number as belonging to respondent; and that she left a voicemail message for respondent in which she indentified herself, stated the reason for her call, and stated that it was urgent for respondent to contact her. Respondent did not respond to either of these detailed voicemail messages.

Furthermore still, DTC Albertsen-Murray's declaration establishes that, in addition to leaving these two detailed voicemail messages for respondent, she made at least two more meaningful efforts to locate respondent and to insure that he had actual notice of this proceeding.

Even though her efforts were apparently unsuccessful, they establish that respondent was given adequate notice of this proceeding. (U.S. Const., 14th Amend.; *Jones v. Flowers, supra*, 547 U.S. at pp. 224-227, 234.)

Thereafter, respondent failed to file a response to the State Bar's motion for entry of default or to the NDC, and the time in which respondent had to file those responses has run. Because all of the statutory and rule prerequisites were met and because respondent was given adequate notice of this proceeding, the court filed an order on December 7, 2010, entering respondent's default and, as mandated by section 6007, subdivision (e)(1), ordering that respondent be involuntary enrolled as an inactive member of the State Bar of California effective December 10, 2010.

On December 28, 2010, the State Bar filed, as a single pleading, a brief regarding discipline, a waiver of default hearing, and a request that the court take judicial notice of relevant official membership records of the State Bar of California.[5] Later that same day, the court took the case under submission for decision without a hearing.

III. Findings of Fact and Conclusions of Law

Under section 6088 and former rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings. Briefly, those factual findings establish the following disciplinary violations by clear and convincing evidence.

In a telephone conversation in about March 2008, Nanette Allen retained respondent to represent her and to prepare and file a Qualified Domestic Relations Order (hereafter QDRO) in

[5] The State Bar's request for judicial notice is GRANTED.

a proceeding that was then pending in the Alameda Superior Court. The QDRO was to divide the pension of her former husband, Larry Jacobs. In that same telephone conversation, respondent agreed, for $200 in attorney's fees, to represent Allen and to prepare and file the QDRO.

On about April 5, 2008, Allen sent to respondent, at his then official address on 6th Street in Berkeley, California, her documents regarding the matter and a $200 money order made payable to respondent as an advanced payment on his fees. Respondent received those documents and the $200 money order on about April 7, 2008. And respondent signed and cashed the money order by about April 17, 2008.

Thereafter, respondent failed to perform the services for which he was hired. From about August 2008 until early September 2008, respondent failed to communicate with Allen. During that time period, Allen left several telephone messages on respondent's answering machine for respondent to contact her about her case. Respondent received those messages, but failed to contact Allen. Eventually, in about early September 2008, Allen reached respondent by telephone. During that telephone conversation, respondent lied to Allen and told her that he was waiting for some paperwork on her case. In fact, respondent had not done any work on Allen's case and was not waiting for any paperwork.

On about September 10, 2008, respondent moved his law office from Berkeley to Danville, California. Respondent failed to notify Allen of his new office address.

From about September 2008 through about August 2009, respondent again failed to communicate with Allen. During that time, Allen left several telephone messages on respondent's answering machine for respondent to contact her. And, on about January 14, 2009, Allen sent respondent a letter requesting that he advise her of the status of her matter. Respondent received Allen's telephone messages and January 14 letter, but still failed to

communicate with her. Thereafter, on about August 20, 2009, Allen sent respondent a letter demanding the return of her $200 because he failed to performed any services for her or to communicate with her. Respondent received Allen's August 20 letter, but failed to return the unearned $200 or to contact Allen.

On about August 20, 2009, Allen filed a complaint against respondent with the State Bar. On about November 6, 2009, a State Bar complaint analyst mailed respondent a letter inquiring about Allen's complaint. That letter, which was properly mailed and correctly addressed to respondent at his then official address in Danville, was not returned to the State Bar by the Postal Service as undeliverable or otherwise. Accordingly, the court finds that respondent actually received the State Bar's November 6 letter. (Evid. Code, § 641 [mailbox rule].)

On about November 19, 2009, respondent sent a letter to the State Bar in which respondent responded to the State Bar's November 6 letter and in which respondent lied and falsely stated that he had never had any communications with Allen, that she was not a client of his, and that she had never hired him to perform any services on her behalf.

On about March 2, 2010, a State Bar investigator sent respondent a letter requesting additional information and documentation from respondent regarding Allen's complaint. That March 2 letter was properly mailed and correctly addressed to respondent at his then official address in Danville. Moreover, the Postal Service did not return the March 2 letter to the State Bar as undeliverable or otherwise. Accordingly, the court finds that respondent actually received the March 2 letter. (Evid. Code, § 641 [mailbox rule].) Respondent, however, did not respond to it.

On about March 30, 2010, the State Bar investigator sent respondent another letter, which was also properly mailed and correctly addressed to respondent at his then official address in Danville. That March 30 letter was not returned to the State Bar by the Postal Service as

undeliverable or otherwise. Respondent actually received that March 30 letter. (Evid. Code, § 641 [mailbox rule].) The March 30 letter contained a copy of the State Bar's March 2 letter and asked respondent to respond in writing to the inquires made in the March 2 letter. Even though respondent received the March 30 letter, respondent failed to respond to it or the March 2 letter.

On about May 24, 2010, respondent relocated his office from Danville to Alamo, California and informed the State Bar membership records office of this fact. On about June 2, 2010, respondent spoke with the State Bar investigator on the telephone and gave the investigator his new address, claimed he was unsure whether he had received the previous letters from the State Bar, and lied and falsely stated that he did not know Allen and that he had never represented her.

On about June 4, 2010, after further investigation, the State Bar investigator sent respondent a third letter inquiring about Allen's complaint. In that June 4 letter, the investigator again requested that respondent provide him written responses to the inquires in the letter. The June 4 letter was properly mailed and correctly addressed to respondent at his then official address in Alamo. The June 4 letter was not returned to the State Bar by the Postal Service. And the court finds that respondent actually received the June 4 letter (Evid. Code, § 641 [mailbox rule]), but that he failed to respond to it.

In sum, except for the letter respondent sent to the State Bar on about November 19, 2009, respondent never provided the State Bar with the written responses or the documents it asked for.

Count One -- Failure to Perform Legal Services (Rule 3-110(A))

In count one, the State Bar charges respondent with willfully violating rule 3-110(A), which provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Even though the court agrees that respondent intentionally

failed to perform legal services with competence, the court declines to find respondent culpable of a separate violation of rule 3-110(A) because the State Bar has also charged respondent's failure to perform as part of the factual basis underlying the client abandonment charged and found under count three, *post*.

The appropriate level of discipline for an act of misconduct does not depend on how many rules or statues proscribe the misconduct; therefore, it is unnecessary, if not inappropriate, to find redundant/duplicative violations (i.e., to find more than one violation based on the same act). (*In the Matter of Van Sickle* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 980, 992; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, count one is dismissed with prejudice because it is duplicative of the misconduct charged and found under count three, *post*. (*Ibid*.)

Count Two -- Failure to Communicate (§ 6068, subd. (m))

In count two, the State Bar charges respondent with willfully violating section 6068, subdivision (m), which provides that an attorney has a duty:

> To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Even though the court agrees that respondent failed to respond to Allen's reasonable status inquiries and failed to notify Allen when he moved his office from Berkeley to Danville, the court declines to find respondent culpable of violating section 6068, subdivision (m) because the State Bar has also charged these same failures to communicate with Allen as part of the factual basis underlying the client abandonment that is charged and found under count three, *post*. In short, count two is also dismissed with prejudice because it is duplicative of the misconduct charged and found under count three, *post*. (*In the Matter of Van Sickle, supra*, 4

Cal. State Bar Ct. Rptr. at p. 992; *In the Matter of Torres*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 148.)

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Count Three – Client Abandonment (Rule 3-700(A)(2))

In count three, the State Bar charges respondent with willfully violating rule 3-700(A)(2), which provides:

> A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

In count three, the State Bar alleges that "By failing to perform the services for which he was hired, by failing to advise Allen of his new address, and by failing to communicate with Allen, respondent abandoned Allen and withdrew from representing her without informing her he was doing so . . . ." The court agrees.

In the absence of an admission or clear evidence of an intent to withdraw, whether an attorney has withdrawn from employment is a conclusion the court must make from the totality of the circumstances. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680; see also *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979.) The totality of the circumstances (e.g., respondent's failures to perform any legal services, to notify Allen of his new office address in Dansville, and to respond to Allen's status inquires and respondent's denials to the State Bar that he represented Allen) clearly support a finding that respondent, in fact, withdrew from employment and abandoned Allen. Thus, respondent willfully violated rule 3-700(A)(2) when he failed to give Allen any notice of his intent to withdraw or of his actual withdrawal.

Count Four -- Failure to Refund Unearned Fees (Rule 3-700(D)(2))

In count four, the State Bar charges that respondent willfully violated rule 3-700(D)(2), which provides, in relevant part, that an attorney must, upon the termination of his or her employment, "Promptly refund any part of a fee paid in advance that has not been earned."

Respondent failed to earn any portion of the $200 advanced fee Allen paid him. Respondent failed to refund the $200 to Allen when he improperly withdrew and abandoned her. Thus, the record clearly establishes that respondent willfully violated rule 3-700(D)(2) when he failed to refund the $200 to Allen.[6]

Count Five -- Failure to Cooperate with Disciplinary Investigation (§ 6068, subd. (i))
Count Six – Acts Involving Moral Turpitude & Dishonesty (§ 6106)

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate and participate in any disciplinary investigation against him when respondent (1) failed to respond to the State Bar's letters of March 2, 2010; March 30, 2010; and June 4, 2010; and (2) lied and falsely stated, in his November 19, 2009 letter to the State Bar and in his June 2, 2010 telephone conversation with the State Bar investigator, that he had never communicated with, been hired by, or represented Allen.

Moreover, the record clearly establishes that respondent engaged in acts involving moral turpitude and dishonesty in willful violation of section 6106, which proscribes such acts, when respondent (1) lied to Allen and falsely told her, in about September 2008, that he had not completed the QDRO because he was waiting for some paperwork on her case and (2) lied and falsely stated, in his November 19, 2009 letter to the State Bar and in his June 2, 2010 telephone conversation with the State Bar investigator, that he did not know Allen and that he had never

[6] Respondent's failure to refund the $200 unearned fee could have been more appropriately charged as part of the factual basis underlying the charged rule 3-700(A)(2) violation in count three. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280-281.)

represented her, communicated with her, or agreed to represent her.[7] As found *ante*, respondent spoke to Allen over the telephone multiple times; agreed to represent her for $200; and received, signed, and cashed the $200 money order she sent him with her documents. Accordingly, it is clear that respondent knew that Allen was one of his clients when he made these false statements to the State Bar.

IV. Aggravation and Mitigation

A. Aggravation

1. Prior Record of Discipline

Respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(1).)[8]

Respondent's first prior record of discipline is the public reproval with conditions attached for one year that the State Bar Court imposed on him in an order approving stipulation that was filed on December 1, 2008, in case numbers 08-O-10535 and 08-O-11821 (consolidated) (hereafter *Klinkner* I).

In *Klinkner* I, respondent stipulated to willfully failing to competently perform legal services (rule 3-110(A)) and to willfully failing to adequately communicate with his clients (§ 6068, subd. (m)) in two separate client matters. In addition, in one of the two client matters, respondent stipulated to willfully failing to return the client's file after his employment was terminated (rule 3-700(D)(1)).

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[7] It is not duplicative to find that respondent's false statements denying his representation of Allen violated both section 6068, subdivision (i) and section 6106. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169.)

[8] All further references to standards are to this source. The standards were not included in the rule revisions adopted by the Board of Governors effective January 1, 2011. Nor have the standards been revised to conform to the new organizational structure for all of the Rules of the State Bar. The standards remain in effect in their current form.

Respondent's second prior record of discipline is the decision that this court filed on October 14, 2010, in case number 10-H-03269-LMA, which is now pending before the Supreme Court in Supreme Court case number S190512 (hereafter *Klinkner* II). (Rules Proc. of State Bar, former rule 216(c).)

As in the present proceeding, respondent's default was entered in *Klinkner* II because respondent failed to file a response to the NDC. In *Klinkner* II, this court found that respondent was culpable of willfully failing to comply with two of the seven conditions attached to his public reproval in *Klinkner* I. Specifically, the court found that respondent violated his quarterly–reporting reproval condition because he submitted his first report six days' late and he failed to submit a final report. In addition, the court found that respondent violated his professional-responsibility-examination reproval condition because he failed to take and pass the Multistate Professional Responsibility Examination no later than December 21, 2009.

In this court's decision in *Klinkner* II, the court recommended that respondent be suspended from the practice of law in this state for one year and that the execution of that suspension be stayed on the condition that respondent be suspended from practice for sixty days and until he files his final reproval report in *Klinkner* I and until he makes and the State Bar Court grants a motion to terminate his suspension (see Rules Proc. of State Bar, former rule 205).

2. Multiple Acts

Respondent's misconduct in the present proceeding involves multiple violations. (Std. 1.2(b)(ii).)

3. Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in this proceeding, which allowed his default to be entered, is an aggravating circumstance. (Std. 1.2(b)(vi).) However, that failure warrants only limited weight in aggravation because the conduct relied on for this aggravating

factor closely equals the misconduct relied on to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigation

Because respondent did not appear in this proceeding, he did not establish any mitigating circumstances. Nor is any mitigating circumstance otherwise apparent from the record.

V. Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. The most severe of the applicable sanctions in the present proceeding is found in standard 2.3, which applies to respondent's section 6106 violations. Standard 2.3 provides:

> Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The generalized language of standard 2.3 provides little guidance to the court. (*In re Brown* (1995) 12 Cal.4th 205, 220; see also *In re Morse* (1995) 11 Cal.4th 184, 206.) Also relevant is standard 1.7(b) which provides:

> If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a

> record of two prior impositions of discipline . . . , the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Notwithstanding its unequivocal language to the contrary, standard 1.7(b) is not strictly applied. In other words, disbarment is not mandatory under standard 1.7(b) even if there are no compelling mitigating circumstances that clearly predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Without question, standard 1.7(b) is not to be applied in a method that blindly treats all prior records of discipline as equally aggravating. And, contrary to the State Bar's contentions, nothing in *In re Silverton* (2005) 36 Cal.4th 81 suggests otherwise.

Standard 1.7(b) is applied "with due regard to the nature and extent of the respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) In that regard, great weight is placed "on whether or not there is a 'common thread' among the various prior disciplinary proceedings or a 'habitual course of conduct' which justifies disbarment. [Citation.]" (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

There are common threads among respondent's misconduct in *Klinkner* I and the present proceeding -- respondent's third disciplinary proceeding. Both proceedings involve client misconduct. As noted *ante*, in *Klinkner* I, respondent stipulated to failing to perform legal services with competence and failing to communicate in two separate client matters. And, in the present proceeding, respondent not only lied to the client about the status of her case (§ 6106), but he also abandoned the client (rule 3-700(A)(2)). The Supreme Court has "often stated that client abandonment is serious misconduct that 'constitutes a breach of the fiduciary duty owed by an attorney to the client and, accordingly, warrants substantial discipline.' [Citation.] Indeed, an attorney's habitual disregard for the interests of his or her clients combined with failure to

communicate with those clients is [client abandonment] and grounds for disbarment. [Citations.]" (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 594-595.)

In addition, respondent defaulted in both *Klinkner* II and in the present proceeding. Moreover, the present proceeding involves not only respondent's failure to cooperate in a State Bar disciplinary investigation, but it also involves respondent lying to the State Bar during its disciplinary investigation (§ 6106).

Also troubling is the fact that respondent engaged in much of the misconduct in the present proceeding during and after his participation in *Klinkner* I. The fact that respondent engaged in misconduct during and after he was involved in the disciplinary process in *Klinkner* I indicates that respondent's discipline in *Klinkner* I had very little impact on his behavior and stongly suggests that, for whatever reason, respondent is either unwilling or unable to conform his conduct to the ethical norms of the profession. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80.)

Furthermore, because of respondent's defaults in *Klinkner* II and in the present proceeding, there is nothing in the record to suggest that respondent is a suitable candidate for further discipline. Under these circumstances, the public, the courts, and the profession will be best served if respondent is required to make the showing required in a reinstatement proceeding following disbarment (Cal. Rules of Court, rule 9.10(f)) before he is allowed to return to the practice of law. (*In the Matter of Hunter, supra*, 3 Cal. State Bar Ct. Rptr. at p. 80.) Accordingly, the court concludes that a disbarment recommendation under standard 1.7(b) is appropriate.[9] In addition, the court concludes that respondent should be required to make

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[9] The court concludes that disbarment is the appropriate level of discipline even if this court's discipline recommendation in *Klinkner* II is rejected or modified. (Rules Proc. of State Bar, former rule 216(c).)

restitution to Allen for the $200 unearned fee together with interest thereon from September 19, 2009, until paid.[10]

VI. Recommended Discipline

The court recommends that respondent **JAMES HADRIAN KLINKNER,** State Bar number 197236, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state. The court further recommends that **JAMES HADRIAN KLINKNER** be ordered to make restitution to Nanette Allen in the amount of $200 plus 10 percent interest per year from September 19, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Nanette Allen plus interest and costs in accordance with Business and Professions Code section 6140.5). The court further recommends that any restitution/reimbursement to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

VII. Rule 9.20 & Costs

The court further recommends that **JAMES HADRIAN KLINKNER** be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

[10] September 19, 2009, is 30 days after August 20, 2009, which was the date on which Allen sent respondent a letter requesting that he refund the $200 unearned fee.

VIII. Order of Involuntary Inactive Enrollment

Finally, in accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **JAMES HADRIAN KLINKNER** be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: March ____ 2011.

LUCY ARMENDARIZ
Judge of the State Bar Court